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February 24, 2015

Honorable Debby Barrett
President, Montana State Senate
P.O. Box 200500
Helena, MT 59620-0500

Via e-mail

Re: COST's Opposition to S.B. 167, Expanding the List of "Tax Haven" Jurisdictions

Dear President Barrett:

On behalf of the Council On State Taxation (COST), I am writing to oppose S.B. 167, a bill that would expand the list of purported "tax haven" countries singled out for inclusion in the Montana corporate income tax base. COST is a nonprofit trade association consisting of approximately 600 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

This legislation represents yet another attempt to expand the "tax haven" country list adopted by the Montana Legislature in 2003. As with prior proposals, S.B. 167 targets major U.S. trading partners for discriminatory treatment, including Ireland, The Netherlands, Hong Kong, Switzerland, and Guatemala. Because of the inherent flaw in the state tax haven approach (an approach the U.S. Government has never embraced), COST respectfully urges the Legislature to abandon the effort to further target U.S. trading partners and instead look for more precise and equitable methods to address any perceived tax avoidance.

Tax Haven Lists are Arbitrary and Misleading. As COST stated in March 2013 when S.B. 309 was being considered (to expand the tax haven list to nations including Ireland, The Netherlands, Hong Kong, and Switzerland), the branding of specific nations as "tax havens" is punitive and will likely result in double taxation of legitimate business activities. In fact, the blacklisting approach has been almost universally rejected as a means of dealing with tax avoidance strategies: of the few states that have any "tax haven" provisions, only Montana and Oregon have taken the "blacklist" approach of designating specific countries as tax havens through

legislation. It is instructive that the California Legislature conducted an extensive examination of such a "tax haven" approach and rejected it.¹

We believe S.B. 167 would undermine a consensus among states that has prevailed for approximately 30 years on how to tax multistate income. Since worldwide unitary combination was rejected in the 1980's, states have appropriately limited the state income tax base to the "water's edge" (either automatically or by taxpayer election). This proposed tax haven expansion would significantly move Montana toward worldwide combination by sweeping in some of the United States' major trading partners.

The Montana Department of Revenue, in its July 2014 Memorandum² to the Revenue and Transportation Interim Committee, applied a variety of tests – including criteria developed by the OECD – to develop recommended additions to the "tax haven" list. The recommendations included Guatemala, Hong Kong, and the Netherlands, but did not mention Ireland and Switzerland. Besides inconsistencies in the proposed additions to the list, the memo highlights the arbitrary nature of the "tax haven" list identification process. The aforementioned OECD list was created 15 years ago for an entirely different purpose (*e.g.*, transparency and information reporting), and has since been discarded by the OECD because all of the nations on the list complied with its requirements. The Department's report also commonly cites "an advantageous tax system" as a factor in its listing decisions – without further analysis or explanation of why such an advantageous system promotes tax avoidance. The Department further said it examined Montana tax filings for the use of holding companies. If the Montana Department of Revenue is concerned with problems involving holding companies, then it should focus its attention on specific transactions or specific corporate arrangements, rather than casting blanket aspersions on entire nations and their international trade.

COST respectfully urges you to reject S.B. 167 and instead examine opportunities to do away with the tax haven list entirely in favor of a policy that is coherent and effective in addressing clearly articulated concerns with income shifting and tax avoidance.

Sincerely,



Ferdinand Hogroian

cc: COST Board of Directors

¹ See the California report here:

http://caleuropeantrade.senate.ca.gov/sites/caleuropeantrade.senate.ca.gov/files/Waters_Edge_CA_Jobs_and_International_Investment_Opportunities_5-19-2010.pdf

² Available at http://revenue.mt.gov/Portals/9/committees/Revenue_Transportation/2013-2014/July/Tax%20Haven%20Report%20Country%20Update%20July%2016%202014.pdf.